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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL MCDUGALL, Plaintiff, v. CIT GROUP, INC., and CIT HEALTHCARE LLC, and CARE INVESTMENT TRUST, INC. Defendants.	Civil Action No.: 10-cv-3633-HB

ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANTS CIT GROUP INC. AND CIT HEALTHCARE LLC

Defendants CIT Group Inc. ("CIT") and CIT Healthcare LLC ("Healthcare") (collectively "Defendants"), by their attorneys, Proskauer Rose LLP, for their answer and affirmative defenses to the First Amended Complaint of Plaintiff Michael McDugall ("Plaintiff"), state as follows:

1. Defendants admit that Plaintiff is seeking "damages, liquidated damages, attorneys' fees and other relief" and purports to bring this action under the "Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001 et seq., the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq. and the common law of

Pennsylvania," but deny that Plaintiff is entitled to any relief. Defendants deny any and all remaining allegations in Paragraph 1 of the Complaint.

2. Defendants neither admit nor deny the allegations in Paragraph 2 of the Complaint because they state conclusions of law to which no responsive pleading is required. To the extent a response is required, the allegations upon which jurisdiction is based are denied.

3. Defendants neither admit nor deny the allegations in Paragraph 3 of the Complaint because they state conclusions of law to which no responsive pleading is required. To the extent a response is required, the allegations upon which jurisdiction is based are denied.

4. Defendants neither admit nor deny the allegations in Paragraph 4 of the Complaint because they state conclusions of law to which no responsive pleading is required. To the extent a response is required, the allegations upon which jurisdiction is based are denied.

5. Defendants neither admit nor deny the allegations in Paragraph 5 of the Complaint because they state conclusions of law to which no responsive pleading is required. To the extent a response is required, the allegations upon which venue are based are denied.

6. Defendants admit that the plaintiff in this action is Michael McDugall but deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's residence.

7. Defendants deny the allegations in Paragraph 7 of the Complaint.

8. Defendants deny the allegations in Paragraph 8 of the Complaint, except to admit that Healthcare is registered to do business in the Commonwealth of Pennsylvania and maintains a place of business at 125 Strafford Avenue, Wayne, PA 19087.

9. Defendants deny the allegations in Paragraph 9 of the Complaint.

10. Defendants neither admit nor deny the allegations in Paragraph 10 of the Complaint because they state conclusions of law to which no responsive pleading is required. To the extent a response is required, the allegations are denied.

11. Defendants neither admit nor deny the allegations in Paragraph 11 of the Complaint because they state conclusions of law to which no responsive pleading is required. To the extent a response is required, the allegations are denied.

12. Defendants neither admit nor deny the allegations in Paragraph 12 of the Complaint because they state conclusions of law to which no responsive pleading is required. To the extent a response is required, the allegations are denied.

13. Defendants deny the allegations in Paragraph 13 of the Complaint, except to admit that CIT is a bank holding company that provides lending, advisory, and leasing services to small and middle market businesses.

14. Defendants admit that Healthcare is an indirect subsidiary of CIT.

15. Defendants deny the allegations in Paragraph 15 of the Complaint, except to admit that in or around March 2007, Plaintiff was hired as a Managing Director in Healthcare.

16. Defendants deny the allegations in Paragraph 16 of the Complaint.

17. Defendants deny the allegations in Paragraph 17 of the Complaint, except to admit that Plaintiff's initial annual salary was $255,000.00.

18. Defendants deny the allegations in Paragraph 18 of the Complaint, except to admit that for fiscal year 2007 only, Plaintiff's discretionary bonus target was 100% of his base salary.

19. Defendants deny the allegations in Paragraph 19 of the Complaint.

20. Defendants deny the allegations in Paragraph 20 of the Complaint, except to admit that as a result of his position as a Managing Director in Healthcare, Plaintiff was eligible to participate in the CIT Employee Severance Plan, which was amended in September 2009.

21. Defendants deny the allegations in Paragraph 21 of the Complaint.

22. Defendants deny the allegations in Paragraph 22 of the Complaint.

23. Defendants deny the allegations in paragraph 23 of the Complaint, except to admit that in or around April 2008, Steve Warden was named the President and Co-head of Healthcare and supervised Plaintiff.

24. Defendants deny the allegations in Paragraph 24 of the Complaint, except to admit that in June 2007, Care conducted an initial public offering and became a publicly traded company.

25. Defendants deny the allegations in Paragraph 25 of the Complaint, except to admit that in 2007, Plaintiff was named the Chief Investment Officer of Care Investment Trust Inc.

26. Defendants deny the allegations in Paragraph 26 of the Complaint, except to admit that Steve Warden was appointed to the Board of Care in 2008.

27. Defendants deny the allegations in Paragraph 27 of the Complaint, except to admit that McDougall and Warden had responsibilities and obligations to both CIT and Care.

28. Defendants deny the allegations in Paragraph 28 of the Complaint.

29. Defendants deny the allegations in Paragraph 29 of the Complaint, except to admit that CIT and Care entered into a Mortgage Purchase Agreement in or around Fall 2008, the terms of which speak for itself.

30. Defendants deny the allegations in Paragraph 30 of the Complaint, except to refer the Court to the MPA, the terms of which speak for itself.

31. Defendants deny the allegations in Paragraph 31 of the Complaint.

32. Defendants deny the allegations in Paragraph 32 of the Complaint.

33. Defendants deny the allegations in Paragraph 33 of the Complaint.

34. Defendants deny the allegations in Paragraph 34 of the Complaint.

35. Defendants deny the allegations in Paragraph 35 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's beliefs.

36. Defendants deny the allegations in Paragraph 36 of the Complaint.

37. Defendants deny the allegations in Paragraph 37 of the Complaint.

38. Defendants deny the allegations in Paragraph 38 of the Complaint, except to admit that the Schwartzberg loan was in default.

39. Defendants deny the allegations in Paragraph 39 of the Complaint.

40. Defendants deny the allegations in Paragraph 40 of the Complaint.

41. Defendants deny the allegations in Paragraph 41 of the Complaint, except to to admit that in Summer 2009, a third party appraiser issued a report on the Schwartzberg loan.

42. Defendants deny the allegations in Paragraph 42 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's beliefs.

43. Defendants deny the allegations in Paragraph 43 of the Complaint.

44. Defendants deny the allegations in Paragraph 44 of the Complaint.

45. Defendants deny the allegations in Paragraph 45 of the Complaint.

46. Defendants deny the allegations in Paragraph 46 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's beliefs.

47. Defendants deny the allegations in Paragraph 47 of the Complaint, except to admit that Plaintiff was not permitted to lead the Schwartzberg loan on behalf of CIT.

48. Defendants deny the allegations in Paragraph 48 of the Complaint.

49. Defendants deny the allegations in Paragraph 49 of the Complaint.

50. Defendants deny the allegations in Paragraph 50 of the Complaint, except to admit that Jerry Clinton and Craig Brown took the lead communications role for the Schwartzberg loan on behalf of CIT.

51. Defendants deny the allegations in Paragraph 51 of the Complaint.

52. Defendants deny the allegations in Paragraph 52 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's beliefs.

53. Defendants deny the allegations in Paragraph 53 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's beliefs.

54. Defendants deny the allegations in Paragraph 54 of the Complaint.

55. Defendants deny the allegations in Paragraph 55 of the Complaint.

56. Defendants deny the allegations in Paragraph 56 of the Complaint.

57. Defendants deny the allegations in Paragraph 57 of the Complaint.

58. Defendants admit the allegations in Paragraph 58 of the Complaint.

59. Defendants deny the allegations in Paragraph 59 of the Complaint, except to admit that in or around December 18, 2009, Scott Kellman, former CEO of Care, was no longer employed by Defendants.

60. Defendants deny the allegations in Paragraph 60 of the Complaint, except to admit that on or around March 1, 2010, CIT CEO John Thain announced that CIT would not pay an annual performance bonus for 2009.

61. Defendants deny the allegations in Paragraph 61 of the Complaint.

62. Defendants deny the allegations in Paragraph 62 of the Complaint.

63. Defendants deny the allegations in Paragraph 63 of the Complaint, except to admit that in or around March 2010, Plaintiff was notified that he would not receive a performance bonus for 2009.

64. Defendants deny the allegations in Paragraph 64 of the Complaint.

65. Defendants deny the allegations in Paragraph 65 of the Complaint, except to admit that in or around March 16, 2010, Care announced that it entered into an agreement to sell the majority of control of the company to Tiptree Financial Partners.

66. Defendants admit the allegations in Paragraph 66 of the Complaint.

67. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 of the Complaint.

68. Defendants deny the allegations in Paragraph 68 of the Complaint.

69. Defendants deny the allegations in Paragraph 69 of the Complaint, except to admit that Plaintiff was offered a severance package pursuant to CIT's Employee Severance Plan.

70. Defendants deny the allegations in Paragraph 70 of the Complaint.

71. Defendants deny the allegations in Paragraph 71 of the Complaint, except to admit that on or about April 5, 2010, CIT's counsel and Plaintiff's counsel exchanged e-mail communications concerning Plaintiff's severance calculations.

72. Defendants deny the allegations in Paragraph 72 of the Complaint.

73. Defendants deny the allegations in Paragraph 73 of the Complaint.

74. Defendants deny the allegations in Paragraph 74 of the Complaint.

75. Defendants deny the allegations in Paragraph 75 of the Complaint.

76. Defendants deny the allegations in Paragraph 76 of the Complaint.

77. Defendants deny the allegations in Paragraph 77 of the Complaint.

78. Defendants deny the allegations in Paragraph 78 of the Complaint.

79. Defendants deny the allegations in Paragraph 79 of the Complaint.

80. Defendants deny the allegations in Paragraph 80 of the Complaint.

81. Defendants deny the allegations in Paragraph 81 of the Complaint.

82. Defendants deny the allegations in Paragraph 82 of the Complaint.

83. Defendants deny the allegations in Paragraph 83 of the Complaint, except to admit that the performance shares awarded to Plaintiff vested in accordance with the terms of the governing Performance Share Award Agreement.

84. Defendants deny the allegations in Paragraph 84 of the Complaint.

85. Defendants deny the allegations in Paragraph 85 of the Complaint.

86. Defendants deny the allegations in Paragraph 86 of the Complaint.

87. Defendants deny the allegations in Paragraph 87 of the Complaint.

AS TO THE ALLEGATIONS IN COUNT I OF THE COMPLAINT

88. Defendants repeat and incorporate their foregoing responses to the allegations in Paragraphs 1 through 87 of the Complaint, as if restated in full herein.

89. Defendants deny the allegations in Paragraph 89 of the Complaint, except to admit that Plaintiff was eligible to participate in CIT's Employee Severance Plan.

90. Defendants deny the allegations in Paragraph 90 of the Complaint.

91. Defendants deny the allegations in Paragraph 91 of the Complaint.

92. Defendants deny the allegations in Paragraph 92 of the Complaint.

Defendants admit that Plaintiff "requests that this Court enter judgment in his favor" and award him the relief listed in the WHEREFORE paragraph of Count I of the Complaint, but deny that Plaintiff is entitled to any such relief.

AS TO THE ALLEGATIONS IN COUNT II OF THE COMPLAINT

93. Defendants repeat and incorporate their foregoing responses to the allegations in Paragraphs 1 through 92 of the Complaint, as if restated in full herein.

94. Defendants deny the allegations in Paragraph 94 of the Complaint except to admit that Plaintiff was eligible to participate in CIT'S Employee Severance Plan.

95. Defendants deny the allegations in Paragraph 95 of the Complaint.

96. Defendants deny the allegations in Paragraph 96 of the Complaint.

97. Defendants deny the allegations in Paragraph 97 of the Complaint.

Defendants admit that Plaintiff "requests that this Court enter judgment in his favor" and award him the relief listed in the WHEREFORE paragraph of Count II of the Complaint, but deny that Plaintiff is entitled to any such relief.

AS TO THE ALLEGATIONS IN COUNT III OF THE COMPLAINT

98. Defendants repeat and incorporate their foregoing responses to the allegations in Paragraphs 1 through 97 of the Complaint, as if restated in full herein.

99. Defendants deny the allegations in Paragraph 99 of the Complaint.

100. Defendants deny the allegations in Paragraph 100 of the Complaint.

101. Defendants deny the allegations in Paragraph 101 of the Complaint.

102. Defendants deny the allegations in Paragraph 102 of the Complaint, except to admit that Care issued performance shares to Plaintiff, pursuant to the governing Performance Share Award Agreement.

103. Defendants deny the allegations in Paragraph 103 of the Complaint.

104. Defendants deny the allegations in Paragraph 104 of the Complaint.

105. Defendants deny the allegations in Paragraph 105 of the Complaint.

106. Defendants deny the allegations in Paragraph 106 of the Complaint.

107. Defendants deny the allegations in Paragraph 107 of the Complaint.

Defendants admit that Plaintiff "requests that this Court enter judgment in his favor" and award him the relief listed in the WHEREFORE paragraph of Count III of the Complaint, but deny that Plaintiff is entitled to any such relief.

AS TO THE ALLEGATIONS IN COUNT IV OF THE COMPLAINT

108. Defendants repeat and incorporate their foregoing responses to the allegations in Paragraphs 1 through 107 of the Complaint, as if restated in full herein.

109. Defendants deny the allegations in Paragraph 109 of the Complaint.

110. Defendants neither admit nor deny the allegations in Paragraph 110 of the Complaint because they state conclusions of law to which no responsive pleading is required.

111. Defendants deny the allegations in Paragraph 111 of the Complaint.

112. Defendants deny the allegations in Paragraph 112 of the Complaint.

113. Defendants deny the allegations in Paragraph 113 of the Complaint.

114. Defendants deny the allegations in Paragraph 114 of the Complaint.

115. Defendants deny the allegations in Paragraph 115 of the Complaint.

Defendants admit that Plaintiff "requests that this Court enter judgment in his favor" and award him the relief listed in the WHEREFORE paragraph of Count IV of the Complaint, but deny that Plaintiff is entitled to any such relief.

AS TO THE ALLEGATIONS IN COUNT V OF THE COMPLAINT

116. Defendants repeat and incorporate their foregoing responses to the allegations in Paragraphs 1 through 115 of the Complaint, as if restated in full herein.

117. Defendants deny the allegations in Paragraph 117 of the Complaint.

118. Defendants deny the allegations in Paragraph 118 of the Complaint.

Defendants admit that Plaintiff "requests that this Court enter judgment in his favor" and award him the relief listed in the WHEREFORE paragraph of Count V of the Complaint, but deny that Plaintiff is entitled to any such relief.

AS TO THE ALLEGATIONS IN COUNT VI OF THE COMPLAINT

119. Defendants repeat and incorporate their foregoing responses to the allegations in Paragraphs 1 through 118 of the Complaint, as if restated in full herein.

120. Defendants deny the allegations in Paragraph 120 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the intended meaning of the word, "benefits."

121. Defendants deny the allegations in Paragraph 121 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the intended meaning of the word, "benefits."

122. Defendants deny the allegations in Paragraph 122 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the intended meaning of the word, "benefits."

123. Defendants deny the allegations in Paragraph 123 of the Complaint.

Defendants admit that Plaintiff "requests that this Court enter judgment in his favor" and award him the relief listed in the WHEREFORE paragraph of Count V of the Complaint, but deny that Plaintiff is entitled to any such relief.

124. Defendants admit that Plaintiff demands a trial by jury, but denies any factual or legal basis for such a demand.

AFFIRMATIVE DEFENSES

As and for separate affirmative defenses to the Complaint, and without conceding that Defendants bears the burden of proof or persuasion as to any of them, Defendants alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is not entitled to the relief sought in the Complaint to the extent said relief is not available under the applicable statutes, regulations, or other relevant provisions of the law.

THIRD AFFIRMATIVE DEFENSE

Defendants relied on legitimate business reasons in all of their actions and decisions with respect to Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

At all relevant times hereto, including prior to the allegations that form the basis of Plaintiff's claims, Defendants exercised reasonable care to prevent and correct promptly any unlawful behavior.

FIFTH AFFIRMATIVE DEFENSE

To the extent that any of Defendants' actions were motivated, in part, by unlawful reasons, (which Defendants deny), Defendants would have taken the same actions for legitimate, business reasons.

SIXTH AFFIRMATIVE DEFENSE

Subject to proof through discovery, Plaintiff's request for relief is barred in whole or in part the doctrines of laches, waiver, estoppel, and/or unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Subject to proof through discovery, Plaintiff's request for relief is barred in whole or in part by the after-acquired evidence doctrine.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent he failed to exhaust any and all administrative prerequisites to filing the instant action.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are pre-empted, in whole or in part, by the Employee Retirement Income Security Act of 1974.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that Defendants' alleged conduct was approved, consented to, authorized, and/or ratified by Plaintiff through his actions, omissions, and/or course of conduct.

ELEVENTH AFFIRMATIVE DEFENSE

There is no basis, legal or factual, for any demand for punitive damages.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages because at all relevant times, including prior to the alleged events that form the basis of Plaintiff's claims, Defendants engaged in good faith efforts to comply with all federal, state or local laws, rules, regulations or guidelines, and at all relevant times, acted in good faith, without malice, willfulness, recklessness, or evil intent.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages are in contravention of multiple provisions of the Constitution of the United States of America and corresponding state constitutional provisions.

Defendants reserve the right to amend this Answer and to assert additional defenses and/or to supplement, alter, or change this Answer and Affirmative Defenses upon completion of appropriate investigation and discovery.

Dated: Newark, New Jersey
March 3, 2011

PROSKAUER ROSE LLP

By: s/Amanda D. Haverstick

Amanda D. Haverstick
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Newark, New Jersey 07102
(973) 274-3200

Attorneys for Defendants
CIT Group Inc. and CIT Healthcare LLC

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused to be served a true and correct copy of Defendants CIT Group Inc. and CIT Healthcare LLC's Answer and Affirmative Defenses on the below listed attorney for Plaintiff, by filing electronically through the Court's ECF system:

Jennifer C. Bell,
Bell & Bell, LLP,
1617 John F. Kennedy Blvd., Suit 1020
Philadelphia, PA 19103.

Dated: Newark, New Jersey
March 3, 2011

/s/Amanda D. Haverstick
Amanda D. Haverstick